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SIPDIS

SENSITIVE

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SUBJECT: SECOND LABOR WORKING GROUP: LIMITED PROGRESS

REF: A. GUATEMALA 971

[B](#). GUATEMALA 1313

[C](#). STATE 186063

[1](#)1. (SBU) Summary: The Ambassador attended the second bilateral working group meeting on labor issues with the GOG on July 10 and emphasized the need for concrete progress prior to submission of a CAFTA to the U.S. Congress. He reiterated USG concern about impunity for violence against union leaders, the need to streamline the labor justice system, and the importance of enforcing court rulings to reinstate workers illegally fired for unionizing activities. The GOG reported some progress from the Executive branch protecting labor rights, especially in the maquila sector. The report of the Special Prosecutor for Crimes Against Trade Unionists was disappointing for lack of progress, while prospects for expedited reform to the labor justice system are not great. The Ambassador noted international concern, including from AFL-CIO President John Sweeny, over the imprisonment of Guatemalan labor leader Rigoberto Duenas in the Social Security Institute (IGSS) corruption scandal. Recognizing that there are few quick fixes to labor rights enforcement, we have begun stressing these labor themes to opposition candidates in the upcoming elections. End Summary.

Background

[1](#)2. (U) The bilateral labor working group was formed at the GOG's suggestion during a visit by USTR and DOS labor officials in March (Ref A). The first working group meeting took place on May 13 (Ref B) and was attended by the GOG, Embassy, USTR and USDOL officials. To maintain momentum on outstanding labor issues, the Ambassador requested that the MFA convoke the second working group meeting, which took place on July 10. Though initially a response to GSP petition review, this meeting coincided with USG "Track Two" demarche (Ref C) to encourage improvement in labor rights enforcement prior to submission of an eventual CAFTA agreement to Congress.

[1](#)3. (U) GOG participants included 24 GOG officials from the Labor Ministry, Economy Ministry, Foreign Ministry, Tax Authority, FONTIERRAS, Social Security Institute, Attorney General's Office, Supreme Court and Judiciary, Congress, and the Solicitor General's Office. Labor Minister Moreira led the GOG side, and explained that, to broaden its range, the GOG's "Multi-institutional Work Committee for Labor Relations in Guatemala" had expanded its membership since the last bilateral meeting to include the Social Security Institute (IGSS), the Fund for Land (FONTIERRAS), the tax authority (SAT), and the land dispute resolution body (CONTIERRA). From the GOG, speakers included MFA Director General of Bilateral Affairs Jose Arturo Rodriguez, Minister of Labor Victor Moreira, Supreme Court Magistrate Otto Marroquin, Labor Court Magistrate Beatriz de Leon de Barreda, and Special Prosecutor for Crimes Against Journalists and Trade Unionists, Antonio Cortez Sis. The Ambassador was accompanied by LabAtt.

The Ambassador's Pitch

[1](#)4. (SBU) The Ambassador thanked the group for the opportunity to exchange views and shared his perception after a recent trip to Washington that concerns about labor rights form the greatest challenge to a CAFTA and will be central to US Congressional review of a possible CAFTA. In response to a call for comment on labor aspects of CAFTA, several US NGOs (WOLA and US/LEAP) and the AFL-CIO had submitted extensive commentaries critical of labor rights protections throughout the region, which reveal negative perceptions of the issue in the U.S. (he provided copies of the three submissions to USTR to the group). The Ambassador told the group that the USG had instructed all its embassies in Central America to pursue bilateral consultations such as this one to emphasize the need for concrete advances to protect labor rights in the region, and a senior-level group would be sending the same message to Central American ambassadors in Washington. The Ambassador reiterated the USG's main concerns about labor

rights protections in Guatemala, emphasizing the damage to Guatemala's international reputation caused by murders of labor leaders and impunity; delays in the labor justice system; and the need to enforce labor court sentences reinstalling workers illegally fired for unionizing activities.

MOL Takes the Lead

15. (SBU) MFA Director General of Bilateral Affairs Jose Arturo Rodriguez turned the meeting over to Labor Minister Moreira, who described his ministry's efforts to protect labor rights. He listed seven reforms to the Labor Code pending in Congress:

- a) Elimination of child labor and the worst forms of labor for children; reduction of the work day for children, sanctions and fines for violations;
- b) Changing the reference to domestic work to "work in private homes;" training in labor rights for these workers; and their incorporation into the Social Security system;
- c) Prohibition of sexual harassment and confinement ("acoso y hostigamiento sexuales"); procedures to prevent it; and making it grounds for dismissal;
- d) Universal severance: severance based on time served (one month salary for each year worked) for workers who quit or leave voluntarily by mutual agreement; option for reinstallation in cases of unjustified firing;
- e) Procedural code reforms: strengthening oral procedures; shortening the hearing process; eliminating recourse to complaints over procedures; reducing the hearing process to one non-appealable hearing; embargo of assets of legal representatives and partners and associates of accused companies; requiring a deposit in cash or guarantee sufficient to cover the cost of the demand to lift the embargo on assets; obligatory authorization of precautionary measures, even before the complaint is heard, or at any time during the process; court costs in cases where the complaint is for unpaid non-renounceable benefits owed to the worker; first oral hearing within two months of presentation of the complaint; (Note: Moreira argued that by cutting short the complaint process the reforms improve efficiency and also give employers an incentive to resolve cases out of court. Moving precautionary measures to seize employer assets to the beginning of the process will also encourage employers to settle justified demands without going to court, further clearing the clogged labor justice system. End Note.)
- f) Creation of the Institute for Public Sector Worker Recreation independent of the Labor Ministry (it is currently a part of the Ministry);
- g) Creating a fund to administer scholarships for Guatemalan workers funded by fees from employers of foreign workers (\$1,282/foreigner/year).

16. (SBU) The Ambassador congratulated the Minister for the reforms, especially the reforms to the labor procedural code, which address one of the USG's main concerns on labor. Asked about their status in Congress, Congressional Deputy Julio Contreras (FRG) said that the reforms had their first reading May 9 and are pending a recommendation of the Labor Commission. That recommendation will be favorable, he said, and the reforms will pass to the plenary. Contreras said he was authorized by President of Congress Rios Montt to say the FRG has the votes to approve the reforms in August. He added that the FRG will allow amendments in an attempt to achieve consensus on the reforms with opposition parties. Asked by the Ambassador if he thought there was any prospect of support from the opposition, Contreras said he thinks some support will be possible.

17. (SBU) Moreira also described the following MOL actions since the first meeting of the bilateral labor working group:

-- He announced the GOG's withdrawal of Article 5 of Government Accord 60-2002, (announced in February 2002), which (reportedly under IMF guidelines) prohibited public sector salary increases in collective bargaining agreements (Note: This provision, protested by public sector unions, was ruled unconstitutional by the Constitutional Court. End Note.)

-- Institutional Reforms: modification of the Ministry's internal regulations and strategic planning processes (a strategic plan has been finalized), and restructuring, including reclassification of positions and salaries to be negotiated with the Ministry's union, and new structures to address child labor, the implementation of ILO Convention 169 on the rights of the indigenous and the handicapped. He said new labor inspectors will be hired by January 2004, raising

the number of inspectors from 833 to 1300 (130 will be dedicated to thematic areas mentioned above). He said the Ministry's budget will increase from \$7.2 million in 2003 to \$17.7 million for 2004, and, for the worker recreation fund, from \$1 million to \$2.1 million. (Comment: These budget increases must be approved by Congress, and could be modified by the next government. End Comment.)

-- Efforts to Address Labor Relations Problems in the Banana Sector: including creation of inter-governmental and tripartite committees to discuss structural problems in the industry; defining options for worker-owned cooperatives, as provided by Chiquita in Panama, with participation of CONTIERRA and FONTIERRAS (the Minister said he would visit Panama soon to discuss this program with workers and the GOP); advances in collective bargaining negotiations on the El Real and El Atlantico plantations, facilitated by a team of five new inspectors to supplement existing coverage; and a compromise reached through MOL mediation between workers and employers in the Bobos district of Morales, Izabal to avoid the use of roadblocks in labor conflicts.

-- Efforts in the Maquila Sector: the MOL has put into practice procedures with the Ministry of Economy to denounce employers which have failed to comply with labor rights obligations, to begin legal procedures and eventual withdrawal of tax privileges (30 cases are now pending in the Economy Ministry); the first such case processed was against Choi Shin/Cimatextiles, which is near resolution (SepTel); a sub-commission of this inter-institutional group is meeting with employers (VESTEX) and NGOs (FLA, COVERCO) and worker representatives to develop responses to problems in the sector. Moreira asserted that its selection of Choi Shin/Cimatextiles as the test case was not an effort to threaten the only existing unions in the sector, nor was it selected for its foreign ownership. Rather, it was chosen because of the strong international attention generated by violence at the plants in July 2001, and the management's lack of compliance with MOL decisions on worker petitions. The list of 30 other companies includes many Guatemalan-owned firms.

-- The introduction of a 24-hour module on labor rights in the second and third grades of secondary school. The Ministry hopes to expand this education effort in future to lower grades and to the university level with ILO support.

Little Progress on Impunity

18. (SBU) Special Prosecutor for Crimes Against Journalists and Trade Unionists Antonio Cortez Sis reported that his office now consists of himself, two agents and two support staff. He expects one more agent to be assigned soon. He highlighted the following "progress" in several murder cases and submitted a list of 100 cases of violence or threats against trade unionists received since the Special Prosecutor's office opened in July 2001, 46 of which have been closed as a result the complaint being dropped; other cases were transferred to other offices, leaving a total of 42 cases under investigation.

-- Carlos Francisco Guzman Lanuza) Secretary General of the Union of Municipal Workers of Nueva Concepcion, Escuintla; murdered November 27, 2002. Status: An ex-municipal council member has been arrested for this and other murders. The case has been transferred to Special Prosecutor for Corruption for prosecution.

-- Baudilio Amado Cermenon Ramirez) Light and Power Union; murdered December 21, 2001. The Attorney General's Office filed a motion contesting the dismissal of the case against his live-in lover by the 6th first instance court.

-- Oswaldo Monzon Lima) General Secretary of the Union of Gas Truckers; murdered June 23, 2000. Status: His son did not show up for a scheduled meeting with prosecutors on July 7, 2003, despite his offer of witness protection.

-- Baldomero de Jesus Ramirez) General Secretary of the Union of Municipal Workers of Santa Lucia Cotzumalguapa; murdered June 22, 1999. Status: Meeting planned with the Municipal Union of Santa Lucia Cotzumalguapa for 7/15/03 to evaluate the request for legal process against Mayor Cesar Augusto Duarte Soto as presumed intellectual author of the murder.

-- El Arco plantation case) head wound from machete delivered to Marcos Alvarez Tzoc on January 17, 2003. The prosecutors are appealing the judge's decision to fine the owner of the plantation, Julio Enrique de Jesus Salazar Pivaral, \$641 for the crime, arguing for jail time. (Note: LabAtt told Cortez that Amnesty International reports more recent threats of violence by the owner against workers. Cortez was aware of the new threats. End Note.)

-- Two SITRABI Witnesses) subject to death threats (presumably from the notorious Mendoza brothers of Morales, Izabal, who committed the crime against the SITRABI union and paid fines in lieu of jail time). The two witnesses were paroled into the U.S. in 2002 for their protection. The prosecutor wants to send someone to interview them, but has not made contact.

19. (SBU) In response to this underwhelming progress report, the Ambassador emphasized the resonance in the U.S. of cases of murdered labor leaders. The strongest argument against Guatemala heard in Washington is that labor leaders are being killed and nobody is being prosecuted. He asked Cortez if there is any way the USG can help him get results. Cortez responded that he recently took stock of his office's efforts and is not satisfied with progress made to date. He assured the Ambassador that his office "has the will to advance."

Judiciary -----

110. (SBU) Supreme Court Magistrate Otto Marroquin and Labor Court justice Beatriz de Leon de Barrera described efforts by the judiciary to expand labor court coverage and train justice workers and judges in labor issues. To improve coverage the judiciary has created 22 labor courts, one in each departmental capital, and permitted justices of the peace in five other municipalities to hear labor disputes, bringing the total number of labor courts nationwide to 38. It has also trained labor judges in conciliation and arbitration of labor disputes. In addition, there are seven labor courts in the capital; one in Coatepeque, which is not a provincial capital but is in an area with many labor disputes (coffee plantations); three appeals courts in the capital and one appeals court in the interior. This is still not enough to meet demand, Marroquin admitted, but funds to expand coverage are limited.

111. (SBU) On another front, the UNDP has funded a study of the penal code and pilot reforms in the capital and Escuintla, but lacks funding to expand the project. A seminar for judges on ILO conventions was recently held. In addition, the Labor Justice Sub-Commission of the National Commission to Strengthen the Justice System, founded by the Peace Accords, held a seminar July 3-4 to analyze the need for reforms to the labor procedural code. A report on the seminar is being drafted.

112. (SBU) Marroquin agreed with the Ambassador that the issue of non-compliance with judicial sentences is a problem. Non-compliance should cause the judge to initiate a penal case against the violator, but many times this does not happen. In some cases, severance pay to illegally fired employees can cause economic hardship on the employer. The case of Salama Horticulture, cited in the AFL-CIO's pending GSP petition against Guatemala, is pending in the Constitutional Court, where 52 illegally-fired workers have appealed an injunction won by the company blocking reinstatement.

113. (SBU) More generally, the judiciary has developed a Modernization Plan which includes emphasis on creation of a judicial civil service, training of judges and magistrates, including in labor issues, and new disciplinary procedures for all judicial sector workers. Computers are being distributed to courts around the country. Meanwhile, the judiciary is negotiating a new collective bargaining agreement with its employees, the first since 1991.

Rigoberto Duenas, Imprisonment -----

114. (SBU) Before closing the meeting, the Ambassador raised the case of the imprisonment of prominent union leader Rigoberto Duenas for his alleged role in the corruption scandal surrounding the National Social Security Institute (IGSS), where he served as the worker representative on the IGSS governing board. The Ambassador noted that he had received 10 letters from the U.S. about Duenas, imprisonment, pending a hearing on July 17, including a copy of a letter from AFL-CIO President John Sweeny to President Portillo requesting a speedy adjudication of the case and adequate protection for Duenas in prison. Cortez responded that he had met with union representatives after Duenas was jailed, and said responsibility for the case now lies with the courts.

Comment -----

115. (SBU) The GOG deserves credit for its willingness to explore new ways to protect labor rights, but its performance in some areas leaves much to be desired. The new Special Prosecutor's report was particularly disappointing. While he may be distracted by a recent wave of attacks and threats against journalists and short on staff resources, we will

look for ways to provide material support for labor investigations. Labor justice is another area where prospects for rapid change seem dim. The prospects for passage of legislative reforms to shorten the judicial process pending in Congress are complicated by the FRG's ever-narrowing margin and other priorities. Nevertheless, the Labor Justice Sub-commission is doing good work building consensus on that issue. We have recently expanded our labor lobbying efforts on the same themes to include labor advisors the business group CACIF and to the GANA coalition, the main opposition challenger to the FRG in the presidential elections, since quick fixes are few and any steps taken by a lame-duck administration will need to be expanded by the next government, which will take office in January, 2004.

HAMILTON